IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION..

WRIT PETITION NO. 7954 OF 2003 .

Shri Mohd. Nasim Shafi Choudhary ... Petitioner.
V/s.
Shri Amjad Mohd.Idris Khan ... Respondents.

Shri I.R. Kulkarni for the petitioner.

Ms. Apita G. Bhaktawar for the respondent.

CORAM : V.C.DAGA, J.

DATED : 19.4.2006.

P.C. :

. Heard learned Counsel for the petitioner.

. Perused petition.

2. This petition is directed against the order dated 31.12.200 whereby Reference (IDA) No. 115 of 2000 came to be rejected in view of bar of section 59 of the MRTU & PULP Act, 1971, relying upon judgment of this Court in the case of **Shri Shivaji Agriculture College, Amravati vs. Mukhta Ahmed 1987 Mah.L.J. 646.**

3. The factual matrix reveals that the complaint was filed by the petitioner-complainant sometime in the year 1999 before the Labour Court being Complaint (ULP) No. 179/99 under section 28 read with Items 1 (a)(b)(d) and (7) of Schedule IV of the MRTU & PULP Act, 1971 ('the said Act'). It further appears that the reference was sent to the

Labour Court on 10.3.2000 by the Deputy Commissioner of Labour u/s 10(1)(c) read with section 12 (5) of the Industrial Disputes Act, 1947 for adjudication of dispute between the parties to the petition identical with that of involved in the Complaint (ULP) No. 179/99 which was already pending in the Labour Court, as mentioned in the above para.

4. The complainant, ultimately, chose to withdraw Complaint (ULP) No.79/99 on 7.3.2002, to contend that with the withdrawal of the complaint, bar under section 59 of the said Act has no application. However, by the impugned order dated 31.12.2000, the Labour Court refused to accept this submission advanced by the petitioner and rejected the reference holding it to be not tenable.

5. The above judgment and order of the CDourt below is a subject matter of challenge in this petition filed under Articles 226 & 227 of the Constitution of india.

Submissions:

6. Learned Counsel appearing for the petitioner submits that the impugned order is an erroneous order. He submits that the judgment of this Court on which reliance was placed i.e. of Shri

Shivaji Agriculture College (supra) has been overruled by Full Bench of this Court in the case of

C.S. Dixit vs. Bajaj Tempo Ltd. 2000 II CLR 719.

7. Shri Kulkarni,learned Counsel appearing for the petitioner submits that in view of withdrawal of the complaint, bar of section 59 stood removed and, therefore, the Court below could not have relied upon bar of section 59 of the said Act to non-suit the petitioner. He placed reliance on para 21 of the judgment of the Full Bench of this Court in C.S. Dixit (supra) which reads as under:

> "We are further of the opinion that if before any effective steps are taken by the Industrial Court under the said Act when the matter is withdrawn then also the bar would not apply. As to what could be the effective steps, the question is to be decided as to the facts and circumstances of the case. It is obviously not possible to enumerate all possible set of circumstances, which in a given case, will induce us to conclude that the effective steps are not taken. At the same time, if effective steps are taken, bar under section 59 would certainly apply. No party can be permitted to either shop the forum or avoid outcome of its own action on the ground of exigency of convenience."

8. Per contra, learned Counsel for the respondent tried to support the impugned order, contending that not withstanding judgment of the Division Bench in the Case of Shri Shivji Agricultre Coollege (Supra) is no longer a good law, even then,

considering the facts and circumstances of the case, the judgment of the Full Bench in the case of C.S. Dixit (supra) will not be applicable to this case.

He, thus, prayed for dismissal of the petition.

CONSIDERATION:

9. Having heard rival parties, before considering rival submissions, it is necessary to turn to the factual matrix involved in the present case. Petitioner came to be dismissed from service by an order dated 3.3.1999. Petitioner filed a complaint under Item 1 of Schedule IV of the MRTU & PULP Act on 16.4.1999 before the Labour Court at Thane being Complaint (ULP) No. 179 of 1999.

10. That during the pendency of the aforesaid complaint, reference came to be made under section 10(1)(c) read with section 12(5) of the Industrial Disputes Act, 1947 on10.3.2000 to the Second Labour Court, Thane, for adjudication of the dispute between the parties i.e. demand of 2nd party for reinstatement with full backwages w.e.f. 3.3.1999. The nature of dispute involved in the reference was identical with that of involved in the complaint. Both proceedings, were simultaneously tried by Court below right upto 7.3.2002 i.e. till withdrawal of the complaint (ULP) No.179/99 by an order dated

7.3.2002.

11. The 2nd Labour Court vide order dated 31.12.2002 passed in the reference proceedings held that it was not open for the petitioner-complainant to ride two horses at a time in view of the bar created by the provision of section 59 of the said Act.

12. At this juncture, it will be necessary to turn to decision in the case of C.S.Dixit (supra), wherein complaint was filed before an order of dismissal; whereas reference was made after order of dismissal. An amendment application sought to be moved before the Industrial Court to challenge action of dismissal by employer. It was rejected by the Industrial Court. Thus, the complaint made before the Labour Court was based on apprehension of dismissal; whereas in the reference validity of actual dismissal was involved. Both proceedings were based on different causes of action and, therefore, it was held that bar of section 59 would not apply.

13. The Full Bench in para (21) of the judgment also opined, if before taking effective steps by the Court under the Act matter is withdrawn, then the bar of section 59 of the said Act would not apply.

What could be the effective steps, the question is to be decided depending upon the facts and circumstances of the case.

14. If the aforesaid law laid down by the Full Bench is applied to the factual matrix of this case it is clear that both the proceedings went on simultaneously; in two Courts; almost for a period of 3 years. Issues involved in both the proceedings were common and identical. Both proceedings had crossed effective stages. In this view of the matter, the bar of section 59 was very much applicabloe in the facts and circumstances of the case in hand.

15. At this juncture, it will not be out of place to mention that the Apex Court had occasion to consider the bar of section 59 of the Act in the case of **M/s Lokmat Newspapers Pvt.Ltd vs. Shankarprasad - AIR 1999 SC 2423 (Paras 48, 49)** the Apex Court has observed as under:

> ". .....The said reference became infructuous only because the appellant, in the meantime, invoked jurisdiction of the Labour Court under section 28 of the Maharashtra Act. That resulted in the applicability of Section 59 of the Maharashtra Act which lays down as under:
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> "If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained

> by any authority in respect of that matter under the Central Act, or, as the case may be, the Bombay Act, and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or, as the case may be, the Bombay Act, then no proceeding shall at any time be entertained by the Industrial or Labour Court under this Act."
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> . It is because of the aforesaid provision of section 59 of the Maharashtra Act that the referred dispute under section 10 of the I.D. Act got disposed of....."

16. In view of the law laid down by the Apex Court as mentioned above, the view taken by the Court below is a reasonable and possible view. Petition is, therefore, dismissed in limine with no order as to costs.

(V.C.DAGA,J.)